IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE, ex rel. ANNE B. POPE, Commissioner of Commerce and Insurance for the State of Tennessee, Petitioner, v. TENNESSEE COORDINATED CARE NETWORK, a Tennessee not-for-profit health maintenance organization; MEDICAL CARE MANAGEMENT COMPANY, a Tennessee for-profit corporation; and ACCESS HEALTH SYSTEMS, INC., a Delaware for-profit corporation; Respondents.	)	No._____

VERIFIED PETITION FOR APPOINTMENT OF RECEIVER FOR PURPOSES OF REHABILITATION OF TENNESSEE COORDINATED CARE NETWORK AND FOR INJUNCTIVE RELIEF

The Commissioner of the Tennessee Department of Commerce and Insurance, Anne B. Pope ("Commissioner" or "Department"), by and through her counsel, Paul G. Summers, Attorney General and Reporter for the State of Tennessee, states as follows:

I. INTRODUCTION AND BACKGROUND

1. The Commissioner seeks an order to rehabilitate Respondent Tennessee Coordinated Care Network ("TCCN"), a non-profit health maintenance organization (HMO), operating the second largest TennCare health plan, known as Access...*Med*PLUS, which serves over 350,000 enrollees statewide (approximately 25% of all TennCare enrollees). The Commissioner further seeks orders granting her the control and injunctions necessary to remediate TCCN's hazardous financial and operational conditions, as authorized in the Insurers Rehabilitation and Liquidation Act, Tenn. Code Ann. §§ 56-9-101, *et seq.*, and in the Health Maintenance Organization Act of 1986, Tenn. Code Ann. § 56-32-217, as amended. TCCN's management company, Medical Care Management Company ("MCMC"), and its affiliate Access Health Systems, Inc. ("AHS"), are named as parties because these on-site corporations provide or

arrange all employees, management, records, systems and facilities for TCCN, and specific provisions of rehabilitation and related injunctions, as discussed further herein, require their cooperation and acts. The Commissioner has determined that rehabilitation is necessary because TCCN has compounded its chronic operational problems with an inability to demonstrate statutory required minimum net worth, pursuant to National Association of Insurance Commissioners ("NAIC") and statutory accounting principles.

2. As detailed below, the Department would consider TCCN's adjusted net worth as of June 30, 2000 to be severely deficient and, depending on the date of the Department's analysis and which version of TCCN's Quarterly NAIC statement is being analyzed, ranging from about $16 million to $28 million deficient, according to statutory accounting principles. As used herein, "adjusted" net worth or "Departmental adjustments" means net worth or other financial calculations or reported figures, that have been revised/adjusted to comply with statutory accounting principles and NAIC guidelines and reporting requirements, based upon information known by or reported to the Department as of the analysis date. Furthermore, prior to any adjustments to the reported claims payable in its preliminary analysis, the Department would consider TCCN's ***adjusted net worth deficiency*** as of September 30, 2000, to be at least $15,823,884, when adjustments are made for non-admitted assets, dated or improper receivables, or reversals of paid claims creating impaired assets, according to statutory accounting principles. Significant adjustments were required to accurately report TCCN's claims payable as of June 30, 2000, and will also likely be necessary for the September 30, 2000 Quarterly NAIC Statement. *See* Affidavit of TDCI Examinations Manager John Mattingly at ¶¶ 49-54, 58, attached as Exhibit A and incorporated herein by this reference.

3. In December, 1999, in part to become "Y2K" compliant, TCCN's management company (MCMC) converted the computerized claims processing system for TCCN. Simply put, this new computer system failed[1] and since then, the claims processing system for TCCN has continued to fail to produce sufficiently accurate and timely payments to hundreds of health care providers as required by law. *Id.* at ¶¶ 10-11, Exhibit A.

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[1]The Department has since learned that this new claims processing system implemented by TCCN was the first attempt by the company OAO to implement a Medicaid based claims processing system. *See* Mattingly Affidavit.

4. In March, 2000, when it became clear to the Department that TCCN was experiencing difficulty with the claims processing system, the Department entered into a Letter of Examination with TCCN that set out the terms for the Department and its consultants to undertake an onsite review and examination of TCCN's operations. A copy of this Letter of Examination is attached hereto as Exhibit B and incorporated herein by this reference. Thereafter, in May, 2000, as a result of this review and examination and TCCN's proposal of several corrective initiatives, the Commissioner imposed a public notice of administrative supervision, pursuant to Tenn. Code Ann. §§ 56-9-501, *et seq.*[2] Under this notice, TCCN was required to demonstrate that it met its own benchmarks for rectifying the claims processing operations problems, as well as meeting certain other conditions set by the Commissioner, including improving member services, rapidly setting up an internal audit function, and being able to demonstrate adequate net worth. When these operational problems had still not been cured by September, 2000, and TCCN had not met its benchmarks, the notice of administrative supervision was extended by agreement. *See* copies of Notice of Administrative Supervision, dated May 10, 2000, and First Amended Agreed Notice of Administrative Supervision, dated September 20, 2000, attached hereto as Exhibits C and D, respectively, and incorporated herein by this reference.

5. When the Department placed TCCN in involuntary administrative supervision in May, 2000, both the TennCare Division of the Department of Commerce and Insurance and the TennCare Bureau of the Department of Finance and Administration became concerned that TCCN would lose its provider network because of the significant and overwhelming problems with the claims processing system. Disintegration of the provider network would clearly adversely affect the ability of enrollees to obtain medical and health care. Therefore, in an effort to hold the provider network intact while TCCN's management tried to fix its operational problems, the State issued a temporary "safety net" to providers advising them that if TCCN was ultimately unable to pay appropriate claims, then the State would do so. This "safety net" was provided by the Department of Finance and Administration ("TDFA"). *See* Affidavit of TDFA

[2]TCCN would not agree initially to a voluntary administrative supervision, although such was offered by the Commissioner.

Deputy Commissioner John Tighe at ¶¶22-23, attached hereto as Exhibit E and incorporated herein by this reference.

6. Despite repeated assurances by TCCN's management during the past twelve months that its claims processing system would be fixed, as well as Departmental oversight and attempted approval of disbursements through administrative supervision, TCCN's management has been unable to fix its claims processing system and achieve even a minimum level of claims payment accuracy rate and timeliness. *See* Mattingly Affidavit at ¶¶ 26-33, Exhibit A.

7. In addition to its failure to timely and accurately pay and process provider claims during the past twelve months, the claims processing system for TCCN has failed to generate accurate financial accounting information, particularly in determining TCCN's accurate adjusted net worth. State law requires that an HMO operating in Tennessee is required to have a specified amount of admitted assets in excess of its liabilities (i.e., "Net Worth"). Tennessee law expresses this net worth requirement "to ensure the public's interest in the delivery of health care services by fiscally sound [HMOs]." Tenn. Code Ann. § 56-32-212(a). During the year 2000, TCCN has reported having met or exceeded its statutory net worth requirement in its Quarterly NAIC statements filed with the Department. (*See* March 31st, June 30th and September 30th Quarterly NAIC statements attached hereto as Exhibit F and incorporated herein by this reference; *see also* Exhibits 10 and 18 to Affidavit of John Mattingly, Exhibit A) However, given the numerous faults with the claims processing system, TCCN should have been extremely conservative in forecasting its liabilities and in determining its accurate adjusted net worth. Instead, TCCN filed a June 30, 2000 Quarterly NAIC statement based upon the inaccurate data that the claims processing system produced, which then resulted in an inaccurate reporting of its adjusted net worth, including the estimation of its liabilities (especially for provider claims payable).

8. Through the administrative supervision and examination, the Department has conducted an analysis verifying actual cash payments or settlements of provider claims for pre-July 1, 2000 dates of services, as well as known provider-asserted liabilities. The Department has determined that TCCN's first amended Quarterly NAIC statement as of June 30, 2000, which when adjusted for NAIC and statutory accounting principles, underestimated its true liabilities for that time period by about $20 million dollars. Initial adjustment to TCCN's later-filed September 30, 2000, Quarterly NAIC statement, and the Second Amended June 30, 2000,

Quarterly NAIC statement, also shows that those statements similarly should reflect TCCN's adjusted net worth as reduced by approximately $20 million. Indeed, TCCN has made actual payments in the months since June 30, 2000, for pre-July 1, 2000 medical services, which exceed the amount estimated as its then-claims liabilities by millions of dollars. Thus, in light of NAIC and statutory accounting adjustments to its June 30, 2000 Quarterly NAIC Statement, TCCN should report liabilities exceeding its admitted assets by at least $ 5 million, although this amount could be considerably higher. Moreover, TCCN cannot rely upon newly created receivables/reversals for alleged provider overpayments - which are non-admitted or impaired assets for statutory accounting purposes - to demonstrate statutorily required adjusted net worth. Proper statutory accounting adjustments to TCCN's September 30, 2000 Quarterly NAIC statement would result in an adjusted net worth deficiency of $15,823,884. *See* Mattingly Affidavit at ¶¶ 50-54, Exhibit A.

9. As a result of this analysis by the Department, including adjustments to TCCN's reported financial statement because of claims payments outstanding, it appears that TCCN cannot demonstrate its statutorily required adjusted net worth, and indeed has a ***negative adjusted net worth***. *See* Mattingly Affidavit at ¶¶ 39, 49-52, 58, Exhibit A. This fragile condition and continuing financial uncertainty is clearly hazardous and requires immediate regulatory action in the form of rehabilitation. Without such regulatory action, TCCN may become unable to pay its creditors in full within a relatively short time period, notwithstanding its receipt of over $50 million monthly from the State of Tennessee.

10. Moreover, TCCN's inadequate net worth presents a readily foreseeable problem because, as a non-profit public benefit corporation, TCCN has few apparent sources of capital infusion. Additionally, TCCN's operating procedures have caused it to experience in the past 12 months, violations of state law and its TennCare contract with respect to timeliness of claims payments, and continued unacceptable inaccuracies in claims payments and TCCN and its management have been unable to make the dramatic operational and systems changes required to bring such procedures in compliance with the law and its contract. *See* Affidavit of TDCI Deputy Commissioner Manny Martins at ¶¶ 23-26, attached hereto as Exhibit G and incorporated herein by this reference. *See also* Mattingly Affidavit at ¶¶24-33, Exhibit A. The Commissioner and the Department no longer have the confidence that management can or will adequately

implement such needed stringent reforms. *See* Martins Affidavit at ¶¶ 13, 31-33, Exhibit G. TCCN's apparent net worth deficiency and faulty operating conditions pose a growing hazard, financial and otherwise, to the State and TCCN's health care providers, which would necessarily be expected to threaten enrollees' access to medical care unless the Commissioner can take control and implement measures to ensure their care. Accordingly, the Commissioner seeks the protections of rehabilitation law, so that she may impose orderly conservation and control of TCCN's assets and make managerial/operational reforms necessary to remedy these hazardous circumstances.

11. The Commissioner has reasonably determined that TCCN is in a financially and operationally hazardous condition and that continued operation of the health maintenance organization under the present circumstances, without rehabilitation, would be hazardous to the enrollees and/or the people of this State, as well as to creditors and health care providers. Thus, pursuant to Tenn. Code Ann. §§ 56-9-302 and 56-32-217, the Commissioner respectfully submits that she should be granted an order to act as Rehabilitator (alternatively referred to as "Receiver") for TCCN with full possession of its assets; to control its management and operations; and, to seek to remove the hazardous conditions that prevent TCCN from properly serving its enrollees and the public.

12. A prime goal of both the Commissioner and the State's TennCare Program is the uninterrupted provision of healthcare to enrollees during the rehabilitation period. To ensure that this occurs while the Commissioner evaluates TCCN's future operations and develops and implements a plan to revitalize TCCN, the Commissioner asks this Court for an order granting the highest administrative expense priority for the expenses of continuing to operate the HMO after entry of an order of rehabilitation. Because Tenn. Code Ann. § 56-9-330(1) provides that such payment priority is available for costs of services and professional services rendered in a rehabilitation, it would be appropriate for this Court to enter an order that all medical and health care providers of TCCN continue to provide such services to enrollees of TCCN in the same manner as provided prior to the filing of the Petition for Rehabilitation, subject to the powers of the Commissioner as Rehabilitator to manage and direct TCCN. *See* Prayer for Relief, below, ¶A.2.A. The State TennCare Bureau would continue to pay TCCN in accordance with a TennCare contract, and this contract is anticipated to guarantee reasonable cost reimbursement to

TCCN for prospective TennCare medical and administrative expenditures, as was done in the recent rehabilitation of Xantus HealthPlan of Tennessee, Inc. *(State of Tennessee ex rel. Anne Pope v. Xantus Healthplan of Tenn., Inc.*, Davidson Chancery No. 99-917-II). Finally, the Commissioner will require an injunction against suits and other acts that could interfere with these and other efforts of the Receiver, as provided by Tenn. Code Ann. § 56-9-105.

II. JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction of this action pursuant to Tenn. Code Ann. § 56-9-104, and venue of this action is properly in the Chancery Court for Davidson County, pursuant to Tenn. Code Ann. § 56-9-104(e).

III. THE PARTIES

14. The Petitioner, Anne B. Pope, is the duly appointed Commissioner of Commerce and Insurance for the State of Tennessee. Pursuant to Tenn. Code Ann. §§ 56-9-101, *et seq.*, the rehabilitation, liquidation or conservation of a domestic insurance company is to be conducted by the Commissioner after her appointment as Receiver by the Court. Tenn. Code Ann. §§ 56-9-301, *et seq.* Pursuant to Tenn. Code Ann. § 56-32-217(a), any rehabilitation, liquidation, conservation or supervision of an HMO shall be deemed to be the rehabilitation, liquidation, conservation or supervision of an insurance company and shall be conducted under the supervision of the Commissioner, pursuant to Chapter 9 of Title 56 of the Tennessee Code Annotated.

15. Respondent Tennessee Coordinated Care Network (formerly Tennessee Managed Care Network) is a non-profit public benefit corporation, incorporated in the State of Tennessee and holding a certificate of authority from the Commissioner to operate as a Tennessee domestic HMO, thereby becoming subject generally to the standards of Tenn. Code Ann. §§ 56-32-201, *et seq.* TCCN contracts with the State of Tennessee's TennCare Bureau in the Department of Finance and Administration to provide health care benefits to persons enrolled in the State's TennCare program. TCCN operates the second largest statewide TennCare health plan, known as Access...*Med*PLUS, which serves over 350,000 TennCare enrollees as of October, 2000. TCCN receives over 99% of its revenue from the State for TennCare enrollees; that TennCare

revenue for the year 2000 is projected to top $500 million. TCCN additionally serves less than 200 commercial group enrollees in its commercial plan known as MedTrust. The President of TCCN is Albert Head, who is TCCN's sole officer/employee. TCCN's principal offices are shown on its annual reports to the Secretary of State as 210 Athens Way, and shown on TCCN's recent reports to the Commissioner as located at 220 Athens Way, Nashville, Tennessee, and it may be served with process by delivering a copy of the summons and petition to Irwin Venick, Suite 1160, 2100 West End Avenue, Nashville, Tennessee 37203, TCCN's registered agent for service of process.

16. Respondent Medical Care Management Company is a Tennessee for-profit corporation. Its President and Chairman of the Board is Anthony J. Cebrun. As recently as May 11, 2000, Mr. Cebrun was also reported to be the President of TCCN, and an *ex officio* board member of TCCN. Certified copies of TCCN's and MCMC's annual reports on file with the Secretary of State's Office are attached hereto as collective Exhibits H and I, respectively, and are incorporated herein by this reference. MCMC's Chief Executive Officer since August, 2000, is Glen Watson. MCMC's principal offices are also located at 210 Athens Way, Nashville, Tennessee, and it may be served with process by delivering a copy of the summons and petition to Susan Short Jones, 210 Athens Way, Nashville, Tennessee 37228, MCMC's registered agent for service of process.

17. Other than its President, TCCN has no employees or other operational assets except through its management contract with MCMC. Thus, MCMC manages TCCN's operations and supplies or arranges for all the personnel, physical space, and equipment that are required to administer and carry out TCCN's functions as a health maintenance organization. By contract, all employees necessary for TCCN to perform its functions are employees of MCMC. *See* Contract dated March 1, 1996, at ¶ 4-2A, p. 12, attached as Exhibit 1 to the Affidavit of Courtney Pearre, attached as Exhibit J , and incorporated herein by this reference. MCMC is also supposed to provide and/or arrange for the performance of all accounting, legal and general administrative functions that are required by TCCN. Records of and/or related to TCCN's business are to be maintained by MCMC. Pursuant to the management contract, MCMC's management fee is based on a substantial percentage (averaging 11%) of TCCN's premium revenue. *See* Exhibit 1 to Pearre Affidavit. In addition, MCMC has a contract with TCCN to

perform utilization management for a certain fee. In 1999, MCMC's management fee totaled $46,576,509. It is expected that MCMC's management fee for 2000 will equal or exceed that amount. See "Relational" Chart attached hereto as Exhibit K and incorporated herein by this reference.

18. In light of the management contract between TCCN and MCMC, it appears that any rehabilitation of TCCN will require the full cooperation of MCMC, its directors, agents, employees and officers. Thus, MCMC is named and served as a party Respondent herein so as to ensure enforcement of this Court's orders with respect to cooperation with the Rehabilitator, which is otherwise mandated by law upon persons with authority over any segment of TCCN's affairs. See Tenn. Code Ann. § 56-9-106 ("Any officer, manager, director, trustee, owner, employee or agent of any insurer, or any other persons with authority over, or in charge of, any segment of the insurer's affairs, shall cooperate with the commissioner in any proceeding under this chapter or any investigation preliminary to the proceeding.")

19. Respondent Access Health Systems, Inc., is a Delaware for-profit corporation authorized to do business in Tennessee. A certified copy of AHS's annual report on file with the Secretary of State's Office is attached hereto as Exhibit L and incorporated herein by this reference. AHS's offices are also located at 210 Athens Way, Nashville, Tennessee, and it may be served with process by delivering a copy of the summons and complaint to Susan Short Jones, 210 Athens Way, Nashville, Tennessee 37228, AHS's registered agent for service of process.

20. AHS is closely affiliated with MCMC. Indeed, according to information furnished by TCCN and MCMC to the Department, MCMC is wholly owned by Medical Care Management Company, USA[3], which in turn is wholly owned by AHS. *See* Copy of Letter dated January 6, 1999, from Susan Short Jones, Corporate Counsel to MCMC and AHS, to then-TDCI Deputy Commissioner Joe Keane, with attachments, attached hereto as collective Exhibit N and incorporated herein by this reference. AHS's annual reports show that Anthony J. Cebrun is the Chief Executive Officer, President and Chairman of the Board of AHS. *See* Exhibit L. Additionally, KPMG's Independent Auditor's Report of TCCN's Statutory Annual Financial

[3]Medical Care Management Company, USA is a Tennessee for-profit corporation. A certified copy of its annual reports on file with the Secretary of State's Office are attached hereto as collective Exhibit M and incorporated herein by this reference.

Statement for the year ended December 31, 1999 and filed with the Department, states that "AHS is partially owned by an officer of TCCN who is a member of the board of directors of both TCCN and MCMC." *See* KPMG Report at p. 10, "Related Party Transaction", a copy of which is attached hereto as Exhibit O and incorporated herein by this reference.[4]

21. AHS and its agents, employees and officers are believed to be acting regularly and daily as agents of MCMC, in that they are providing key management personnel to make or carry out the many executive decisions directing TCCN's health maintenance organization business and MCMC's administrative functions. *See* Mattingly Affidavit at ¶6, Exhibit A. *See also* "Relational" Chart, Exhibit K. Thus, in light of MCMC's management contract, the common management and close affiliation of MCMC and AHS, and the staffing of MCMC's obligations to TCCN with AHS personnel, it appears that any rehabilitation of TCCN likely cannot be carried out without the full cooperation of AHS, its directors, agents, employees and officers. Further, the Commissioner would require the complete preservation of and access to all records about or relating to, in any manner whatsoever, TCCN's performance as a health maintenance organization and MCMC's performance of administrative and other duties for TCCN, that AHS and MCMC may have, regardless of the form or designation of such records. Like MCMC, AHS is named and served as a party Respondent herein so as to ensure enforcement of this Court's orders with respect to full cooperation, which is otherwise mandated by state law. See Tenn. Code Ann. § 56-9-106.

IV. FACTUAL ALLEGATIONS

22. The Commissioner's staff in the TennCare Division of the Department of Commerce and Insurance has regular and continuing duties to review information about the HMOs that contract with the state TennCare program and to examine their affairs. The Department staff, in conjunction with consultants to the Department, have advised the Commissioner as to the condition of TCCN, developed through their examination reports, as well as through the administrative supervision of TCCN. Based upon this information, the

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[4]Mr. Cebrun was no longer a member of the TCCN Board or an officer of TCCN as of June 30, 2000, according to recent information (December 7, 2000 letter of Susan Short Jones, a copy of which is attached hereto as Exhibit P and incorporated herein by this reference), but remains listed on 2000 Quarterly NAIC Statements as an Administrator of TCCN. *See* Second Amended Quarterly NAIC Statement of June 30, 2000, filed December 18, 2000, Exhibit 18 to Mattingly Affidavit, Exhibit A.

Commissioner has determined that because of its hazardous financial condition and unacceptable conditions in its business operations, TCCN poses a grave risk to the enrollees, creditors and the public of this State.

A. TCCN's Inability To Demonstrate Statutorily Required Net Worth

23. During the administrative supervision, the Department supervisory and examination team has had access to information regarding expenditures made by TCCN. Except for the management fee to MCMC (approximately 11% of revenue) and payment of a 2% premiums tax to the State, TCCN's expenditures consist of health care and medical services provider payments. Payments to providers are determined and made through TCCN's claims processing and payment system provided by MCMC. There is generally a significant time lag between when a provider delivers medical or health services to an enrollee and the time that the bill for that service is received and adjudicated by the HMO. Accordingly, on their financial statements, HMOs must estimate the amount of these liabilities, which are referred to as IBNR ("incurred but not reported"). Because of the malfunctions of the claims processing and payment systems (as discussed further herein), TCCN has been producing financial reports that are based on extremely poor and unreliable data since January, 2000, and consequently, these reports are subject to substantial revision as better and more accurate information is produced. Additionally, because the claims system cannot produce reliable claims reports, TCCN has had to estimate its liabilities (IBNR) by an inferior method of projection. These estimated liabilities (IBNR) for health care services form the main, indeterminate component of TCCN's financial statement, as of any given reporting date. *See* Mattingly Affidavit at ¶32, Exhibit A.

24. Tenn. Code Ann. § 56-32-212(a) provides expressly that "[t]o ensure the public's interest in the delivery of health care services by fiscally sound [HMOs]" each HMO must provide the Commissioner evidence of compliance with minimum net worth requirements established in that statute. Pursuant to Tenn. Code Ann. § 56-32-212, TCCN is required to have a minimum net worth of $10,846,626 for the calendar year 2000. Net worth is defined as meaning the excess of total admitted assets over total admitted liabilities, but the liabilities cannot include fully subordinated debt approved by the Commissioner. As used in statutory accounting practice, the term "admitted assets" is a standard, which by law, and by reference to

the NAIC accounting practices, limits the types of assets regarded as sufficiently liquid and certain to be received by an HMO to be applied against its liabilities so as to be available to pay the costs of providing health care services to enrollees. Assets can be "non-admitted" for statutory (HMO-regulatory) accounting purposes even though they might be "admitted" in the context of generally accepted accounting principles (GAAP) to be included and counted in a company's balance sheet. *See* Mattingly Affidavit at ¶34, Exhibit A.

25. In its Quarterly NAIC statement for the period ending June 30, 2000, TCCN reported that it had a positive net worth of $13,494,160 (an amount in which the Department did not agree), apparently exceeding its statutory minimum requirement. *See* Exhibit F. However, because the Department was aware of TCCN's faulty claims processing system and the resulting inaccurate data it has produced since January, 2000, it conducted a cash analysis of TCCN, including a runout of TCCN's incurred but not reported (IBNR) claims, by testing the TCCN's Quarterly NAIC statement estimate of liabilities against subsequent payments. This method of checking the reserves for liability claimed by an HMO to determine if it is has underreserved its liabilities in determining its net worth is a standard procedure. *See* Martins Affidavit at ¶¶13-17, Exhibit G; Mattingly Affidavit at ¶37, Exhibit A.

26. As a result of this cash analysis, the Department has adjusted TCCN's net worth based on actual expenditures for medical services rendered prior to July 1, 2000, but paid by TCCN since June 30, and continues to update this figure based upon further expenditures by TCCN and determinations of outstanding liabilities. However, Department staff determined that, based on information known as of October 31, 2000, TCCN actually had a ***negative adjusted net worth*** of ($7,796,941) as of June 30, 2000, which when added to its statutory net worth requirement of $10,846,626, results in a statutory net worth deficiency of approximately $18.6 million. *See* Mattingly Affidavit at ¶¶37-40, Exhibit A. The amount of this negative net worth has grown through November to approximately $23 million as the Department has continued to tabulate payments made, and to a potential deficiency of $28,370,911, calculated as of December 26, 2000 information. *Id.*, ¶¶49-58 Thus, it is the Department's position that instead of demonstrating a net worth in excess of the required statutory minimum, TCCN lacks many millions in order to comply with the statutory requirement. Moreover, because TCCN

would continue to make claims payments for pre-July medical services, the net worth would decline further, creating an even greater net worth deficiency.

27. Furthermore, TCCN's management has not made a realistic, frank assessment of TCCN's financial condition. On November 3, 2000, the Department provided to TCCN its cash analysis of TCCN's June 30th net worth. In its response submitted on November 14, 2000, TCCN did not challenge the accuracy of the payment numbers in the State's cash analysis, but instead asserted that TCCN actually had a positive net worth of approximately $16 million, as a result of alleged advance payments, overpayments and erroneous or duplicate payments to providers, which TCCN booked as receivables, but that were asserted to have been overlooked by the Department in its analysis. *Id.*, ¶¶41-48 In other words, TCCN "found" overpayments to providers, which heretofore had not been shown on TCCN's Quarterly NAIC statements.

28. Even if TCCN's net worth deficiency is a result, in part of overpayments, advance payments and duplicate payments to providers as TCCN alleges, ***the claiming of such a large amount of receivables must be construed as an admission by management that it has failed to adequately manage TCCN's finances and operations.*** Moreover, reliance upon these claimed receivables and their potential recovery as the cure for TCCN's net worth deficiency is highly questionable and presents a serious concern to the State. As used herein, an "advance payment" is one that is made to a provider in advance of the provider actually billing for and/or rendering services to an enrollee and in advance of the HMO having any contractual obligation to pay the provider. An "overpayment" occurs when the HMO's claims processing system pays a provider on a claim above the amount the HMO believes was in fact owing on that claim, such as, pursuant to contract. A "duplicate payment" is where the HMO's claims processing system pays a provider on a claim twice. In concept, when an advance payment is issued, or overpayment or duplicate payment is determined by the HMO, a "prior negative" balance may be claimed against the provider's account in the HMO's claims processing system. In theory then, this prior negative balance is reduced as future claims are processed for that provider or funds are recouped from the provider, until the balance reaches zero and cash payments can once again commence for subsequent claims. A major snag in recouping is the assumption that the provider receiving the payments will continue to serve the HMO's enrollees and submit claims against some negative balance. However, if the provider does not continue to serve that HMO's TennCare

enrollees, does not submit subsequent claims to offset the prior negative balance, or does not agree that the negative balance should exist (in the case of overpayments or duplicate payments), then the HMO will have multiple problems in collecting refunds from the providers for alleged outstanding balances. As discussed further herein, many of TCCN's providers are contesting the recoupment of alleged overpayments. Martins Affidavit, ¶¶21, 27-29, Exhibit G; Mattingly Affidaivt at ¶¶ 55-57, Exhibit A.

29. A further obstacle to the successful operation of such an advance payment or overpayment methodology is that it relies wholly upon the premise that the claims payment data in the HMO's system is accurate and reliable. However, such accuracy and reliability is lacking in the claims processing system for TCCN, which TCCN's management has admitted. Indeed, management has indicated that the current claims system will only pay at just a 50% to 70% accuracy rate until it is corrected, with the estimated date of correction now placed at May, 2001. *See* Martins Affidavit at ¶¶26-29, Exhibit G; also Mattingly Affidavit, ¶47, Exhibit A.

30. Moreover, even if there was reliable and accurate data from TCCN's system backing up these receivables, many, if not most, of the receivables would not be an admitted asset, for net worth purposes, because of their age. Under National Association of Insurance Commissioners ("NAIC") guidelines, as well as Tenn.Code Ann. § 56-32-212(a)(5)(D), any receivable over 90 days old may not be reported as an admitted asset. Thus, any provider advance or overpayments TCCN has already made that are not offset against subsequent paid claims or recouped from the provider within 90 days of making the advance payment or overpayment will be considered a non-admitted asset, thereby effectively reducing TCCN's net worth. When a claims processing system does not adjudicate claims in a timely and/or accurate manner, as clearly is the case here, the likelihood that an advance or claimed overpayment will be offset or recouped within 90 days diminishes substantially. Martins Affidavit, ¶30, Exhibit G; Mattingly Affidavit, ¶¶47-49, Exhibit A.

31. Additionally, while TCCN asserts in December, 2000, that these receivables should be established for alleged overpayment errors due to the claims processing system, it should be noted that the company did not report any adjustments for underpayment errors, which have been previously identified by the claims processing system during supervision. For example, TCCN management had admitted that it needed to pay more for "global authorization"

systems errors, which resulted in rejected claims and underpayments to ancillary providers, once a principal provider, such as a hospital, had been paid for that authorization on that date of service. This "global authorization" systems problem was not corrected until July, 2000, so that the system operated in error from January through July of this year. More recently, in attempting to fix its claims processing system for one type of improper claim denial, TCCN has created a new system error causing multiple claims to be denied with the improper denial reason "AC" or "Authorization Outside Claim." The creation of this new system error in October and November, 2000, may have conservatively created improper underpayments to providers during that period of over $4 million dollars. *See* Mattingly Affidavit at ¶¶28, 57, Exhibit A.

32. Furthermore, prior to November when the Department informed TCCN regarding the Department's adjusted June 30, 2000 Quarterly NAIC statement, there does not appear to have been efforts by management to claim and recover the alleged duplicate payments. While TCCN asserts that it will recover approximately $1.3 million dollars of overpayments in anesthesia claims, the experience of TCCN during administrative supervision indicates that TCCN was more likely to have denied and underpaid anesthesia claims rather than having overpaid them, as the system had had problems processing the complicated anesthesia payment schedule and in most samples did not pay or underpaid anesthesia claims. *See* Mattingly Affidavit at ¶44, Exhibit A.

33. Additionally, for providers in which settlements have been completed involving pre-July 1, 2000 dates of services (as discussed further herein), any alleged duplicate payments or other overpayments apparently may not be recoverable per the terms of the settlements. From documentation provided by TCCN in support of the alleged HCFA and UB duplicated payment claims, it appears that at least $7.3 million dollars of these claimed payments fall within the dates of service already settled with providers. *Id.*, ¶47.

34. Most recently, as of December 15, 2000, TCCN has begun reversing claims previously considered paid and now asserts that these claims were overpaid to providers in the amount of $18,620,109. *Id.*, ¶52. For statutory accounting reporting purposes, these claimed receivables/reversals should be disallowed because they appear to be at least ninety (90) days old, as they are more than ninety (90) days from the accrual of the receivable - the time of the alleged provider overpayments. *See generally* Tenn. Code Ann. ¶ 56-32-212 (a) (5)(D).

35. Moreover, TCCN has started recouping cash by not paying for claims currently submitted by certain providers against whom TCCN has set up these negative balances during December 2000. As of December 15, 2000, TCCN had recouped $8,297,605 from currently due claims to providers by offsetting this amount against the reversals. Therefore, with a recognition of the amount of claimed receivables already recouped, the receivable/negative balances allegedly due from providers disallowed due to the ninety days rule then becomes approximately $10,322,414. However, TDCI would treat this $8,297,605 -or any other similar - recovery from current claims as a liability, since the Department has reason to believe it is an "impaired asset" as described in Accounting Practices and Procedures Manuel, effective January 1, 2000, Volume 1, SSAP No. 5, "Liabilities, Contingencies, and Impairment of Assets," Summary Conclusion (re: liabilities). *See* Mattingly Affidavit at ¶¶52-53, Exhibit A.

36. Furthermore, the Department is concerned about an MCO setting up a receivable of the above described type and magnitude (i.e., approximately the MCO's statutory net worth requirement), without explicit provider agreement to that practice (including the amounts). The use of such a receivable could become a potential method of disguising net worth problems and could quickly erode the provider network of a participating MCO. If providers agree that they have been overpaid and owe to TCCN the corresponding amounts reflected in the receivables claimed by TCCN and that TCCN may collect these from future payments that are due to providers, then those receivable amounts would be allowable assets. *Id.* at ¶54.

37. However, the Department has received information that most providers apparently are contesting TCCN's attempt to recoup receivables from providers in this manner and in these amounts. As a standard examination technique to verify the accuracy of claimed receivables and reversals, the Department in writing contacted 76 providers (26 hospital providers with over $10,000 in TCCN claims reversals/receivables and the largest claimed reversals/receivables for 50 other type providers) to confirm the accuracy of the claimed receivables or reversals reported by TCCN, on TCCN's December 8 and 15, 2000 Remittance Advices to providers. *Id.* at ¶55. Of the provider responses received as of December 29, 2000, the majority contest the claimed receivables/reversals in some manner. *See* Exhibits 20 and 21 to Mattingly Affidavit, Exhibit A. Indeed, at least one provider, University Health System, Inc. (formerly known as University of Tennessee Medical Center at Knoxville) has already filed suit against Respondents TCCN,

MCMC and AHS in Knox County Chancery Court, challenging TCCN's attempts to recoup alleged overpayment to it and has obtained a temporary restraining order preventing TCCN's managment from unilaterally writing off claims submitted by University Health System, Inc. Copies of the complaint and restraining order are attached hereto as Collective Exhibit R and incorporated herein by this reference.

38. Furthermore, the Department's current analysis reveals that there are approximately $6.6 million in claims inappropriately set up as negative balances because they are to providers whose claims with TCCN have already been settled for the dates of services now claimed by TCCN as included in the receivables. In addition, there is approximately $1.4 million in previously agreed to and adjusted claims with Metropolitan General Hospital (in Nashville) included in these claimed receivables, which the hospital contests. Mattingly Affidavit at ¶56, Exhibit A and Exhibit 21 thereto.

39. An added concern in light of the knowledge that TCCN has a dysfunctional claims processing system, is the fact that there is no evidence of any adjustments by TCCN for underpayments to providers. *Id.* at ¶57. Finally, even if TCCN's net worth is adjusted based upon the above described adjustments regarding alleged receivables/reversals or recoupment of alleged overpayments to providers as of December 18, 2000, it still indicates an ***adjusted net worth deficiency***, as of June 30, 2000, of $ 2,292,476. Further adjusted net worth as of June 30, 2000, when considering known provider asserted liabilities, results in a ***deficiency*** of $28,370,911, calculated with information through December 26, 2000.[5] *See* Exhibit 22 to Mattingly Affidavit, Exhibit A. Furthermore, based upon the Department's preliminary adjustments (prior to any adjustments to reported claims payable, which will likely be required) to TCCN's Quarterly NAIC statement as of September 30, 2000, net worth similarly should be

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[5]Currently, TCCN has not attempted to include as an asset on its NAIC statements any amount for a claim filed by TCCN on December 12, 2000, with the Division of Claims Administration seeking from the State $160,000,000.00 as damages, alleging that the TennCare Program has breached the Contractor Risk Agreement and underpaid TCCN that amount in capitation payments during the course of the TennCare Program. If TCCN reports this litigation claim for $160,000,000 of damages on its NAIC statements as an admitted receivable asset or gain, that gain contingency should not be recognized. *See generally* SSAP No. 5, "Liabilities, Contingencies, and Impairments of Assets," Exhibit 19 to Mattingly Affidavit, Exhibit A. Any litigation, including this claim for $160,000,000 in alleged damages, is a "gain contingency" that is defined as "an existing condition, situation or set of circumstances involving uncertainty as to possible gain . . . to an enterprise that will ultimately be resolved when one or more future events occur or fail to occur (e.g., a plaintiff has filed suit for damages associated with an event occurring prior to the balance sheet, but the outcome of the suit is not known as of the balance sheet date). Gain contingencies shall not be recognized in a reporting entity's financial statement." *See* SSAP No. 5, at ¶13 (Gain Contingency)(effective Jan. 1, 2001). *See also* Mattingly Affidavit, Exhibit A, ¶59.

statutorily adjusted by *decreasing* it by $20,196,101.00 to reflect the non-admissibility of alleged "recoverable overpayments," which TCCN incorrectly included as an admitted asset on its statements. With this statutory adjustment only, TCCN has an ***adjusted net worth deficiency***, as of September 30, 2000, of at least $15,823,884.00, prior to any claims payable adjustments. *See* Mattingly Affidavit, ¶50 and Exhibit 17, Exhibit A.

40. In essence, TCCN's management is attempting to solve its net worth deficiency identified in the Department's adjustment to TCCN's June 30 and September 30, 2000 net worth through the establishment of non-admittable receivables and reduction of the value of provider asserted liabilities. Thus, given all the facts and circumstances, it is highly unlikely that TCCN will be able to effectively recover these receivables in an amount sufficient to eliminate their ***adjusted net worth deficiency*** without significant disruption of its provider network, and correspondingly provision of heath and medical care services to its TennCare enrollees, particularly as management has currently refused to even acknowledge that there is a problem with TCCN's net worth. *See* Mattingly Affidavit, Exhibit A. *See also* Martins Affidavit, Exhibit G.

41. Furthermore, the "Statement of Actuarial Opinion" rendered by Reden & Anders, Ltd., an actuarial firm retained by the Office of the Attorney General of the State of Tennessee to evaluate the June 30, 2000 Medical Claims Liabilities for TCCN, supports the findings and determinations of the Department. As set forth and described in that document, the actuarial opinion estimated that the total net medical claims liabilities for TCCN as of June 30, 2000 are $78,683,036, with an estimated range of results for that liability being from $72.5 million to $95 million. Thus, if the total net medical claims liablity, as calculated by Reden & Anders, had been properly reported by TCCN on its Quarterly NAIC Statement as of June 30, 2000, then the company's adjusted net worth deficiency would be equal to or greater than those revealed through the Department's adjustments. *See* Martins Affidavit at ¶ 40 and Exhibit 3 thereto, Exhibit G.

42. Additionally, TCCN is a non-profit corporation, with no shareholders and, more importantly, with no immediate, obvious source of capital or other external funds for infusion into the corporation. The Commissioner deems that these circumstances cannot supply "earnings" so as to quickly end TCCN's ***adjusted net worth deficiency*** of a still unknown

amount and that the potential for a severe ***adjusted net worth*** shortfall requires the institution of a rehabilitative receivership to avoid financial hazard during this financial instability. Accordingly, control of TCCN by the Commissioner is required to instill confidence in both the enrollees and providers, as TCCN navigates through dramatic reforms necessary to eliminate its ***adjusted net worth deficiency*** and the operating conditions that resulted in such deficiency.

B. TCCN's Chronic Operational Problems In Making Timely And Accurate Payments to Health Care Providers

43. The Tennessee Legislature has determined that there is a need for health care providers in the TennCare program to be paid timely and accurately for their services. Accordingly, in 1999, the Legislature passed a statute specifically requiring timely payments by TennCare HMOs to their providers:

> This subsection is intended to ***ensure the prompt and accurate payment of all provider claims*** for services delivered to an enrollee in the TennCare program which are submitted to a health maintenance organization involved in a TennCare line of business or a subcontractor of that organization. Accordingly, each such organization or subcontractor must establish and implement the following procedures for the processing of provider claims and the resolution of any disputes regarding the payment of such claims:
>
> (1) ***The [HMO] shall ensure that ninety percent (90%) of claims for payment for services delivered to a TennCare enrollee (for which no further written information or substantiation is required in order to make payment) are paid within thirty (30) days of the receipt of such claims. The [HMO] shall process, and if appropriate pay, within sixty (60) days ninety-nine point five percent (99.5%) of all provider claims for services delivered to an enrollee in the TennCare program.***

Tenn. Code Ann. § 56-32-226(b)(emphasis added). Adherence to this law serves the important public goal of ensuring the continued willingness of health care providers to contract with TennCare HMOs to supply health care to TennCare enrollees.

44. In addition to this statutory requirement, the TennCare contract with TCCN requires the HMO to pay ninety-five percent (95%) of all clean claims submitted by contract and non-contract providers within thirty (30) days of receipt. The HMO is further required to process all claims submitted by contract and non-contract providers within sixty (60) calendar days of receipt. The TennCare Bureau has informed the HMOs in the TennCare program that because the time frames established for processing claims in the TennCare contract are more stringent that those in the statute, the contract provisions will continue to be enforced as to such HMOs. *See* Mattingly Affidavit at ¶¶ 7-8, attached as Exhibit A.

45. Since the majority of TCCN's liabilities are determined through its claims processing system, its failure to timely and accurately pay non-capitated providers is a critical problem. The results of this type of problem over a year's period of time are as follows:

a. providers are not accurately and timely paid;
b. the completion and accuracy of financial data and related information is significantly compromised;
c. the completeness and accuracy of data needed to operate TennCare is significantly compromised;
d. the ability to determine net worth is adversely affected since the financial data is not reliable;
e. the company's net worth is adversely affected due to inaccurate payments and financial information.

Id. at ¶ 9.

46. Here, the main result of TCCN's claims processing system failure during the year 2000, has been that accuracy and timeliness of its claims payments have fallen far short of the standards imposed by law and by contract, with the corresponding disruption in its own and its health care providers' finances. During the First Quarter of 2000, the Department began receiving increased and material complaints from providers and other sources regarding lack of payment or inaccurate payment from TCCN. Upon investigation of these complaints, the Department discovered that TCCN's system configuration had resulted in incorrect denials or claims, inappropriate payments, advances, long delays and/or missing claims, as well as the existence of approximately 300,000 claim lines[6] that had been entered into the system, but would not process and could not be accessed through a usual and expected system inquiry. Additionally, the Department conducted on-site "mail-room" and other testing and found that in over thirty-five dates in which sample sizes of twenty-five claims were tested for timely and accurate processing, only 33% of total claims averaged being processed accurately. Furthermore, only 54% of tested claims averaged being processed timely. Data entry accuracy only averaged being 64%, and approximately 28% of the claims that were being tracked could not even be found in the claims processing system when they were tested. Even when test summaries were reported simply for the fully processed claims, only 57% of those claims averaged being processed accurately. On the average, the tested fully processed claims were only done in a timely fashion (within 30 days of the date the claim was submitted) in 73% of the claims

[6]A claim line is a unique billed service.

selected. These test results were essentially consistent with reports by TCCN's own consultants regarding timeliness and accuracy of claims processing and estimates that the claims processing system for TCCN averages operating at its best at only 50% to 70% accuracy during 2000. *See* Mattingly Affidavit at ¶ 11, Exhibit A. *See also* Pearre Affidavit at ¶18, Exhibit J.

47. The inability to timely and accurately process provider claims has not been the only result of TCCN's claims processing system failure. Pursuant to the TennCare contract, TCCN is required to provide "encounter data" to the TennCare Bureau on a monthly basis. Encounter data is information provided by an HMO concerning the services provided to each of its enrollees, i.e., the nature of the service, the provider, the date service was provided, the cost, etc. During 1999, TCCN met its contractual requirements to provide this encounter data on a monthly basis to the TennCare Bureau. However, in early 2000, TCCN provided a noticeably decreased amount of this information to the TennCare Bureau. As a result, in March, 2000, TennCare exercised its rights under the TennCare contract to retain the 5% withhold from the February capitation payment. *See* Tighe Affidavit at ¶12, Exhibit E.

48. Five percent of the monthly capitation payment is the standard withhold amount for a TennCare HMO that has had no withholds retained by TennCare for six months. If an HMO is compliant with contract terms and the State is not imposing a retention, then the 5% is released to the company the following month. If, however, the HMO is not compliant, then the 5% is not released and the withhold amount is increased to 10% the following month. In February, TCCN's encounter data was provided slowly, and by March, 2000, a pattern had emerged that the encounter data either was not received, or if received, was not accurate. This lack of adequate encounter data from TCCN, that continued for several months, was supported by the findings of the Department that TCCN was suffering a major claims processing malfunction dating from a systems conversion in December, 1999. Accordingly, based upon the February withhold and TCCN's non-compliance, TCCN's withhold level was increased from 5% to 10% in March, 2000. *See* Tighe Affidavit at ¶13, Exhibit E.

49. TCCN's failure to report its encounter data (or to report it in a timely fashion) during that time period has meant that TennCare has been denied a basic tool for evaluating its program and the provision of care to its enrollees. Without clean encounter data, the TennCare

Bureau cannot determine the quantity or types of provider services rendered to enrollees. This has resulted in a severe handicap to the program. *Id.* at ¶19.

50. Moreover, health care providers and other TennCare interested groups have expressed frustration and anger at the State over TCCN's failure to produce intelligible or timely remittances, seeking a resolution to their now very strained relations with TCCN. Indeed, some providers have sent letters to the TennCare Bureau stating that they are out of the TennCare program as a whole because they assert the situation at TCCN creates a lack of confidence in the TennCare program overall. *Id* at ¶17.

51. By the Spring of 2000, on every operational front, TCCN did not look financially or operationally stable to TennCare, and the State was put into the position of having to make available millions of state and federal dollars to TCCN, without any assurances and/or with insufficient and inaccurate data about what services were being provided to enrollees for this expense. This lack of accountability, as well as the Department's inability to determine TCCN's actual net worth, were the main reasons that led to the Department, with TennCare's support and approval, placing TCCN in administrative supervision in May, 2000. *See* Tighe Affidavit at ¶¶20-21, Exhibit E and Martins Affidavit at ¶11, Exhibit G.

52. In the spring of 2000, there were numerous providers indicating that they would not continue to provide services to TCCN enrollees without substantial assurances that they would not be exposed to the risk that TCCN's finances were worse than currently stated. These concerns led to the development of a temporary "safety net" concept. The Department of Finance and Administration gave providers verbal assurances, as described in the Affidavit of TDFA Deputy Commissioner John Tighe (at ¶22) that the State would be willing to assure health care providers that they would be paid for the care provided by them during the supervision, if TCCN were ultimately unable to meet its financial obligations. This was designed to avoid providers' flight from serving the TCCN enrollees that appeared destined to occur if no safety net were devised. This solution also offered a ***chance*** to TCCN to cure its problems within the timeframe it had proposed. Through supervision, the Department had the authority to approve disbursements by TCCN so that any money paid by TCCN would, in fact, go to providers and that TCCN's management company would receive only its proper payments. Under the Order of Supervision, the Supervisor was to monitor and approve all disbursements, including payments

to the management company. *See* Tighe Affidavit at ¶¶22-23, Exhibit E and Martins Affidavit at ¶11, Exhibit G. In administrative supervision, it is important to note that the Department had no authority to operate TCCN, cure its claims processing problems, process the claims or otherwise manage TCCN. In otherwords, administrative supervision is primarily for monitoring only.

53. Under supervision, the existing management would still have to be able to put into place a new or adequately performing claims processing system with attendant remedies to operation shortfalls during the supervision period.[7] The supervision did allow, however, the Department's representatives to look more closely at what could be happening to claims received by TCCN and allowed the State to help ensure that the monthly capitation payments would properly go to the providers. As such, the safety net initially was a positive development for TCCN's providers, particularly the larger providers, out-of-network providers and big teaching hospitals. The assurances of the safety net gave these providers some confidence to try to negotiate with TCCN to get claims paid and/or to settle their claims. *See* Tighe Affidavit at ¶25, Exhibit E.

54. The existence of supervision also afforded some comfort to the TennCare Bureau such that they agreed to release retained withholds of TCCN's capitation payments that had built up because of the encounter data problem. This avoided causing TCCN to permanently lose money, which would hurt the purpose of ensuring that providers would be paid. *Id.*

55. As stated, under the Order of Administrative Supervision, nearly all disbursements by TCCN were to be approved by the Supervisor, Courtney N. Pearre, or his designee. These were made upon submittal to him by TCCN of requests for disbursement, on a daily basis. These disbursements fell generally into the following categories: (1) medical and dental check runs; (2) wire transfers; and, (3) check requests. Check requests, included, among other things, enrollee reimbursements; enrollee reimbursements due to TennCare directives; "Mom To Be" health promotion expenses; TCCN board member per diems and related expenses; accounting fees; legal fees; premium taxes; and provider disbursements on fee-for-service and capitated payment bases, which for a variety of reasons would not process through the claims

[7]At the time TCCN was placed in administrative supervision, TCCN and its private consultants were operating under its own internal cure plan, which it had submitted to the Commissioner on or about April 25, 2000. This plan contained several key dates whereby certain critical components of TCCN's operations, such as its claims processing system, would be "cured," or at least significant improvements could be measured. This cure plan failed. *See* Pearre Affidavit at ¶18, Exhibit J.

processing system for TCCN. *See* Pearre Affidavit at ¶¶20-23, Exhibit J. These disbursement approvals were intended to ensure, under the facts and circumstances, that payments that issued were fair to providers, enrollees and vendors, and that they were accurate, to the extent possible under the constraints of TCCN's claims processing system. *Id.*

56. On at least three occasions, however, TCCN failed to obtain the Supervisor's approval prior to making disbursements. The first instance, which occurred in mid-June, 2000, released several hundreds of thousands of dollars in checks, as a result of these checks being mistakenly included on the advance payments log. The second instance occurred as recently as the week of November 13th, when checks totaling $750,000 were sent to nine providers, despite specific instructions from the Supervisor that payments to six of the nine providers would not be approved unless and until certain defects were corrected. In the third instance, as recent as December 27, 2000, TCCN released an unapproved payment to USA Managed Care Organization network for administrative services *Id.* at ¶¶25-27.

57. In addition to approving the disbursements described, supra, the Supervisor also has approved a number of settlements during the administrative supervision. Because of the faulty claims processing system, TCCN has been forced to settle millions of dollars in provider claims. These settlements have had a positive effect for the providers in that they have been paid. However, they have had a negative effect for TCCN because they are inefficient, duplicative, time-consuming and cause accounting difficulties for TCCN. *Id.* at ¶30.

58. Until recently, the process established by the Supervisor for reviewing proposed settlements has worked smoothly. But settlements now appear to be experiencing unexplained delays or other problems. Moreover, in some instances, TCCN has refused to continue negotiations with providers unless the provider agrees to sign a new contract with TCCN. In other instances, TCCN has provided insufficient time for the Supervisor to review proposed settlements and has, in at least one instance, settled with a provider and disbursed funds without the Supervisor's approval and contrary to the Supervisor's instructions. *Id.* at ¶¶35-38. Also, TCCN has now filed and publicly announced an administrative petition to challenge a number of supervisory decisions. The matter is being defended vigorously by Department counsel, but regardless of the outcome, it is clear that litigation over terms of supervision is troubling, as well as inefficient. See Martins Affidavit at ¶ 36, Exhibit G.

59. TCCN has not made significant progess in the accuracy rates of its payments during the supervision. The Department has kept up the monitoring of the level of claims errors and untimeliness of payments and has determined that the claims error rates have not improved and cannot improve adequately under the current claims processing system (with which TCCN's own management has agreed). *See* Mattingly Affidavit at ¶29, Exhibit A; Martins Affidavit at ¶26, Exhibit G.

60. Moreover, on September 18, 2000, Glen Watson, who is represented to be the Chief Executive Officer of MCMC, advised Commissioner Pope that TCCN's claims processing system was operating at best at a 95% accuracy rate for hospitals, a 70% accuracy rate for physician providers, and a 50% accuracy rate for durable medical equipment, transportation and other providers. Additionally, Mr. Watson admitted that TCCN had failed to meet any of its critical bench marks under the Cure Plan submitted to the Commissioner on April 25, 2000. Pearre Affidavit at ¶18, Exhibit J. TCCN only provided new benchmarks to the Commissioner as of December 21, 2000, to plot implementation dates for a new claims processing system to be in service on May 1, 2001. *See* Martins Affidavit at ¶ 31, Exhibit G.

61. As early as July, TCCN representatives and the Department agreed on the need for a back-up system for the claims processing system. *See* Pearre Affidavit at ¶19, Exhibit J. This fall, TCCN, and its management company, MCMC, finally concurred with the Department that further attempts to fix the existing claims proccessing system would not be worthwhile and that TCCN should seek the services of an alternate claims processing administrator. There is consensus among all the vendors evaluated that such a conversion to an alternate system would require at a minimum 4 to 6 months and would have to allow for the "new system" to be brought up "in parallel" with the existing system, so as to allow it to be adequately tested before it would be allowable for it to function on its own. Accordingly, the implementation of a new claims processing system should not have been delayed. *See* Mattingly Affidavit at ¶30, Exhibit A.

62. Additionally, in order for TCCN to correctly implement a new claims processing system, it must first re-negotiate contracts with providers for a more standard, ascertainable fee schedule. This is essential as the fee structure presently existing at TCCN is extremely complicated and difficult to input, manage and alter in a contemporary managed care claims processing system. In essence, TCCN's fee schedules are not "computer-friendly." Continued

delays in developing a comprehensive, standard, ascertainable and manageable fee schedule now serves to hold up the entire correction process. Development of comprehensive fee schedules is a prime responsibility of the management of the health maintenance organization, and so far, such reform has not been effectively implemented. *Id.* at ¶31.

63. This lack of an effective claims processing system at TCCN jeopardizes the TennCare Program in several ways. It jeopardizes provider networks, as they understandably have uncertainty about their ability to receive proper and timely payments, thereby jeopardizing the enrollees' ability to receive needed medical services and care. Further, the TennCare Bureau's ability to appropriately manage the program is impeded when one of the main sources of encounter data does not function timely or accurately. This data is used for program management, including quality monitoring as well as rate-setting. When 25% of this data is potentially inaccurate and untimely, the entire Program is clearly jeopardized. Finally, the State is in jeopardy because TCCN cannot demonstrate statutorily adequate net worth, or even any net worth at all, as a result of its grossly malfunctioning claims system. *See* Tighe Affidavit at ¶31, Exhibit E.

64. In light of TCCN's chronic operational problems and deficiencies, as well as TCCN's inability to conclusively demonstrate *even a positive adjusted net worth*, it is now evident to the State that the safety net it has offered to TCCN's providers is very likely be utilized. Indeed, the disagreement between the Department and TCCN as to the actual amount of ***adjusted net worth deficiency***, where the Department has analyzed TCCN's adjusted net worth, reported as of June 30, 2000, to be likely in a range of $16 million to $28.3 million (and growing), and TCCN insists that it has a positive net worth of over $16 million, is itself a sign of hazard to the State and the TennCare program overall and presents a serious and unacceptable risk. *See* Tighe Affidavit at ¶30, Exhibit E and Martins Affidavit at ¶37, Exhibit G.

65. Thus, the regulatory forebearance that might have been acceptable months ago when the net worth numbers of TCCN appeared positive and unchallenged is now no longer an acceptable posture for the State. TCCN has entered its twelfth month of having a grossly malfunctioning claims processing system that it has been unable to correct. Moreover, TCCN is experiencing a significant net worth deficiency according to TDCI analyses. The Department of Finance and Administration has determined that it would be hazardous for it to continue to

financially support TCCN (i.e., the "safety net" under administrative supervision), unless the proper amount of remedial control is granted to the Commissioner through a rehabilitation order. Such an order affords an opportunity for the Department to come in and manage the HMO, while maintaining the ability of the HMO to continue providing the important services to 25% of the State's TennCare enrollees. Without rehabilitation, the Department of Finance and Administration has no confidence in TCCN's financial condition or in its ability to effect an operational and financial turnaround. *See* Tighe Affidavit at ¶35, Exhibit E.

66. The Commissioner of the Department of Commerce and Insurance has determined, based upon information obtained through Department examination of TCCN under administrative supervision and from the Department's consultants, that TCCN presents a financial hazard to its creditors, enrollees and the State because of its severely deficient ***negative adjusted net worth***. Additionally, the Commissioner has determined that TCCN presents an operational hazard to its creditors, enrollees and the TennCare Program as a result of the chronic malfunctioning of its claims processing system since December, 1999, and the failure to cure the operational problems, along with other poor management performance. Accordingly, the Commissioner has concluded that it is in the best interests of TCCN's enrollees, its health care providers, the TennCare Program, and the State as a whole, that TCCN should be put in rehabilitation.

V. CAUSE OF ACTION

67. Tenn. Code Ann. § 56-9-301 authorizes the Commissioner to apply by petition to the Davidson County Chancery Court for an Order authorizing her to rehabilitate a domestic insurance company. Prepaid health care delivery plans, such as TCCN, are deemed to be "insurers" for purposes of applying the Act. See Tenn. Code Ann. § 56-9-103(12) and § 56-9-102(7). Both formal delinquency proceedings, rehabilitation and liquidation may be based upon one or more of the grounds stated in Tenn. Code Ann. § 56-9-301, including that:

> ***(1) The insurer is in such condition that further transaction of business would be hazardous financially to its policyholders, creditors, or the public.***

Tenn. Code Ann. § 56-9-301(1) (emphasis added).

68. Similarly, the HMO statute specifically permits the Commissioner to apply for an order directing the Commissioner to rehabilitate, liquidate, conserve or supervise a health maintenance organization under the Act, upon any one or more of the grounds set out in Chapter 9 of Title 56, or when, in the Commissioner's opinion, ***the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of this state.*** See Tenn. Code Ann. § 56-32-217(a), as amended by 2000 Public Acts, ch. 708. In the case of a net worth deficiency of an HMO, Tenn. Code Ann. § 56-32-212(a)(7) permits the Commissioner to take action against the HMO if:

> (A) A health maintenance organization does not propose a plan to correct its working capital or net worth deficiency within the time frame described above;
>
> * * *
>
> (C) ***The commissioner determines that an improper working capital or net worth status cannot be corrected within a reasonable time***; or
>
> (D) ***The commissioner determines that an organization is in such financial condition that the transaction of further business would be hazardous to its enrollees, its creditors, or the public.***

Tenn. Code Ann. § 56-32-212(a)(7) (emphasis added). A minimum amount of statutory net worth is required by Tenn. Code Ann. § 56-32-212(a)(2), calculated on the annual premium revenue of TCCN for 1999. Net worth means the excess of total admitted assets (pursuant to NAIC accounting guidelines) over total admitted liabilities, excluding fully subordinated debt approved by the Commissioner. TCCN's minimum net worth requirement for the year 2000 is $10,846,626. Furthermore, based on this year's projected revenue, TCCN's minimum net worth requirement is expected to increase by approximately $2 million in 2001.

69. Given the adjustments required of TCCN's Quarterly NAIC statements and its ***negative adjusted net worth***, the Commissioner has determined that TCCN cannot reasonably be expected to satisfactorily demonstrate adequate net worth in a reasonable time by its own current manner of operations. TCCN is operating in a manner that produces erroneous payments, unknown losses, and volatile statements of financial position.

70. The grounds for rehabilitation do not require the Commissioner to prove that TCCN is insolvent or to wait for that degree of crisis before taking action for the protection of enrollees, providers and creditors. Indeed, Tenn. Code Ann. § 56-32-217(a) only requires that the Commissioner determine, in her opinion, that continued operation of the HMO would be

hazardous either to the enrollees or to the people of this State. Moreover, a hazardous financial condition short of insolvency is a ground for rehabilitation or liquidation, and aids in the purposes of the Liquidation Act, as set forth in Tenn. Code Ann. § 56-9-101(d), including "[e]arly detection of any potentially dangerous condition of an insurer, and prompt application of appropriate corrective measures." There simply is no requirement that the Commissioner wait until insolvency strikes or for TCCN's network of providers to disintegrate due to the claims payment and medical management problems before she is empowered to act, if she otherwise detects a potentially dangerous condition of the HMO that presents a prospective hazard to enrollees, providers, creditors and the public.

71. Thus, given the determinations of the Department's staff and consultants that there have been and continue to be major problems with TCCN's claims payments and major deficiencies with its claims reporting, such that an accurate current net worth for TCCN cannot be ascertained, the Commissioner has determined that continued operation of TCCN under such circumstances is a dangerous condition and would clearly be hazardous to TCCN's enrollees. Furthermore, with documented and admitted delays and inaccuracies in proceedings and payment of claims, coupled with an inability to establish an accurate net worth and the threat that the "safety net" will ultimately be used to supply cash or that provider payments themselves will be "recouped," providers would understandably be wary about remaining in TCCN's network and continuing to provide needed medical services to TCCN's TennCare enrollees. ***Such potential for network fragmentation alone constitutes a hazard to the enrollees.***

72. Other factors the Commissioner may consider to determine whether the continued operation of an insurer transacting an insurance business in this State might be deemed to be hazardous, financially or otherwise, to the policyholders, creditors or the general public, include among others:

> (a) Adverse findings reported in financial condition and market conduct reports;
> (j) The age and collectibility of receivables;
> (o) Whether the company has experienced or will experience in the foreseeable future cash flow and/or liquidity problems.

Rulemaking Hearing Rules of the Department of Commerce and Insurance, Chapter 0780-1-66-.03. (a), (j) and (o).

73. The extreme uncertainty surrounding TCCN's operational viability, financial condition and the doubts created by TCCN's inability to correct its claims system failures after a reasonable time for correction is a condition which is hazardous to the enrollees, providers and creditors of TCCN. The Commissioner deems these circumstances require a receivership by which different management decisions must be made for the benefit of the company, the providers and enrollees, and through the filing of this Petition, obtain the remedies that can only be obtained through the receivership statute. Those remedies are deemed by the Commissioner as the best means now available to obtain the confidence of the network, to protect the HMO from suits seeking unfair or inequitable advantages by certain creditors over other creditors, to protect the enrollees' continued health care, and to generate a fair opportunity for TCCN to be revitalized, if possible, and its creditors to be treated in an orderly and equitable fashion.

VI. FEATURES OF THIS REHABILITATIVE RECEIVERSHIP

74. **Management and Possession of TCCN.** When a Rehabilitator is appointed pursuant to Tenn. Code Ann. § 56-9-301, several statutory powers flow from the order under the Act. The order to rehabilitate the HMO directs the Commissioner, as Rehabilitator, to immediately take possession of the assets of the HMO, and vests title to all assets in the Rehabilitator. Tenn. Code Ann. § 56-9-302. The order does not constitute the anticipatory breach of any contracts of the HMO, and it shall not be grounds for retroactive revocation or retroactive cancellation of the HMO's contracts, unless such is done by the Rehabilitator. The Rehabilitator takes those actions deemed necessary by her to reform and revitalize the HMO and the powers of the HMO's directors, officers and managers are suspended, subject to redelegation by the Rehabilitator.

75. Thus, statutorily, MCMC's powers to manage TCCN would be suspended pending redelegation and affirmance by the Rehabilitator. The Commissioner has recognized in this case, however, that some of MCMC's services will be necessary to the immediate ongoing operations of TCCN and, therefore, will take steps to continue those services of MCMC that are needed. The Rehabilitator has full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the

HMO. Tenn. Code Ann. § 56-9-303. This may include operating the HMO for a significant time or for a short period. In this case, the Commissioner intends to operate TCCN.

76. **Injunctive Relief And Records Protection.** The Commissioner as Rehabilitator has the ability to apply for restraining orders, temporary and permanent injunctions under Tenn. Code Ann. § 56-9-105, to prevent the transaction of the insurer's business, transfer of property, interference, waste of assets, destruction of records or data, or continuation or initiation of a number of types of actions against the insurer or its policyholders or enrollees. The Commissioner requests such injunctions here. Of particular note are the injunctions requested to prevent the destruction or transfer of data, information or records. Given that both MCMC and AHS actively manage TCCN, they are specifically named in the injunctions so that there will be no destruction or transfer of their records and data that pertain in any way to the business or affairs related to TCCN. The Commissioner also requests such injunctions against institution of any actions against TCCN pending further order of this Court for the protection of TCCN and its enrollees upon the appointment of a Rehabilitator, as more fully set forth in the terms for an order of rehabilitation in the prayer for relief. Furthermore, under Tenn. Code Ann. § 56-9-106, all persons who have been performing or are concerned in any way with the affairs of TCCN are required to fully cooperate with the Commissioner, which necessarily includes persons of MCMC and AHS. Finally, under Tenn. Code Ann. § 56-9-304, actions in which TCCN is a party or is obligated to defend, are stayed for 90 days or such additional time as is needed to allow the Rehabilitator to take action in the pending litigation. Additional injunctions may be sought at a later date by the Rehabilitator.

77. **Examination and Investigatory Powers.** A Receiver appointed under Tenn. Code Ann. § 56-9-302, charged with reforming and revitalizing the insurer or HMO if appropriate, is authorized to determine if there has been conduct, or breaches of contractual or fiduciary obligations detrimental to the company. The Rehabilitator may pursue all appropriate legal remedies on behalf of the insurer. Tenn. Code Ann. § 56-9-303(d). The Department, which has been examining TCCN extensively up until now, will continue to have that role. Furthermore, because TCCN is an HMO participating in TennCare, specialized examination and investigatory powers are given this Court and the Department of Commerce and Insurance by

statute in the HMO act, in addition to other powers found in the insurance law. Tenn. Code Ann. § 56-32-217(c) states as follows:

> (c) For the purposes of supervision, rehabilitation, or liquidation of health maintenance organizations that participate in the TennCare program under the Social Security Act, Title XIX, or any successor to the TennCare program, and in addition to the powers and duties set forth in this part, **the department or the chancery court shall have the power to examine and investigate the affairs of every person, entity, [HMO], an affiliate of the parent of the [HMO], or an affiliate of the [HMO]**, in order to determine whether the person, entity, [HMO], an affiliate of the parent of the [HMO], or an affiliate of the [HMO], is operating in accordance with the provisions of this part and title 71, chapter 5 [Tennessee's medicaid act]. For purposes of this subsection, "Affiliate" means any entity which exercises control over or is controlled by the HMO, directly or indirectly through:
>
> (A) Equity ownership of voting securities;
>
> (B) Common managerial control; or
>
> (C) Collusive participation by the management of the HMO and affiliate in the management of the HMO or the affiliate.
>
> For purposes of this subsection, "person" includes an individual, insurer, company, association, organization, Lloyds, society, reciprocal insurer or interinsurance exchange, partnership, syndicate, business trust, corporation, agent, general agent, broker, solicitor, service representative, adjuster, and every legal entity.

The rehabilitation order anticipates that the Commissioner and this Court may be required to exercise the powers under Tenn. Code Ann. § 56-32-217(c) in order to fully determine and remediate the causes of TCCN's hazardous conditions.

78. **Appointment and Payment of Special Deputy Rehabilitators.** The Commissioner intends to exercise her power to appoint more than one special deputy rehabilitator. The principles for the Commissioner's fixing of the fees and submittal to the Court are found in the recent appellate decision in *State ex rel. Pope v. Xantus HealthPlan of Tennessee*, App. No. M2000-00120-COA-R10-CV, May 17, 2000. The health maintenance organization bears the expense of these administrative costs.

79. **Development of Rehabilitation Plan.** Under Tenn. Code Ann. § 56-9-303(e), if the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger or other transformation of the HMO is appropriate, the Rehabilitator prepares a plan to effect such changes. The Rehabilitator shall account to the Court and report periodically as to the likelihood that a plan will be prepared and the timetable for doing so. These will be status reports to the court. The Rehabilitator applies for approval of such plan, and after notice and hearing prescribed by the Court, the Court may approve such plan, disapprove it, or approve it as modified. Any plan approved under Tenn. Code Ann. § 56-9-303(e) shall be, in the judgment of

the Court, *fair and equitable to all parties concerned.* The Rehabilitator then carries out the plan.

80. **Avoidance Powers.** The filing of a petition for rehabilitation affords statutory remedies upon the entry of an order of either rehabilitation or, if needed, any subsequent liquidation, which enable the receiver to avoid preferential, fraudulent, and certain other financial transfers prior to the filing date of the petition. These statutory powers, found at Tenn. Code Ann. §§ 56-9-315 and 316, are granted because they increase the possible available funds for the benefit of the rehabilitating or liquidating insurer's policyholders and creditors.

81. **Special Litigation.** On December 12, 2000, TCCN filed a claim against the State of Tennessee, Department of Finance and Administration in the Claims Commission alleging the State had breached its TennCare contract with TCCN and seeking to recover $160 million dollars. Subsequently, on December 13, 2000, TCCN filed a lawsuit in the United States District Court, Middle District of Tennessee, against the Department of Finance and Administration and the Department of Health (*Tennessee Coordinated Care Network v. Warren Neel, et al.*, No. 3-001226). In light of the parties involved, the Commissioner of Commerce and Insurance as Rehabilitator believes special accommodation should be made for addressing these lawsuits. Accordingly, the Commissioner will submit to this Court for approval a plan to address these lawsuits.

82. **Other Rehabilitation Conclusion Options.** Whenever the Commissioner believes further attempts to rehabilitate an insurer would substantially increase the risk of loss to creditors, policyholders or the public, or would be futile, the Commissioner may petition this Court for an order of liquidation under Tenn. Code Ann. § 56-9-305. The directors of TCCN may defend against such a petition. Additionally, the directors have statutory rights to petition the Court for a termination of the rehabilitation that would end receivership of the entity. Termination of rehabilitation may be sought by the Rehabilitator or the Court itself. Tenn. Code Ann. § 56-9-305(c).

VII. CONCLUSION

For all the foregoing reasons, the circumstances support entry of an order of rehabilitation. Moreover, TCCN should be required promptly to respond to this Petition, and a hearing on this Petition should be granted promptly because of the Commissioner's immediate need for the statutory powers of a Rehabilitator.

WHEREFORE premises considered, Petitioner prays as follows:

A. That an Order Appointing the Commissioner as Rehabilitator of Respondent Tennessee Coordinated Care Network, be entered with substantially the following terms:

1. Petitioner Anne B. Pope, in her official capacity, or her successors in office, be appointed as Rehabilitator of Tennessee Coordinated Care Network, Inc., a Tennessee not-for-profit health maintenance organization ("TCCN" or "insurer") for the purposes of rehabilitation under Tenn. Code Ann. § 56-9-302. The Commissioner, as Rehabilitator, is directed forthwith to take possession of the assets and records of TCCN immediately and to administer them under the general supervision of the Court with all the powers granted a Rehabilitator under Tenn. Code Ann. §§ 56-9-101 et seq. The Commissioner as Rehabilitator is hereby authorized and directed to conduct the business of TCCN and take all steps, as the Court may authorize, toward the removal of the causes and conditions that have made this Order of Rehabilitation necessary and to take such further action, as the Rehabilitator deems necessary or appropriate, to reform and revitalize TCCN. The Commissioner shall have immediate access to and shall occupy and control the premises and all records, databases, and computer files used to carry out, or related in any way to, the business of TCCN, regardless of their location and possession. Pursuant to Tenn. Code Ann. § 56-9-133(d), appointment of the Commissioner as receiver shall in no way operate to bring records of TCCN under Tenn. Code Ann. § 10-7-503 [the public records act]. Under Tenn. Code Ann. § 56-9-302(c), entry of this Order of Rehabilitation shall not constitute an anticipatory breach of any contracts of the TCCN nor shall it be grounds for retroactive revocation or retroactive cancellation of any contracts of the insurer, unless such revocation or cancellation is done by the Rehabilitator pursuant to Tenn. Code Ann. § 56-9-303. The Commissioner in her role as Rehabilitator, or as otherwise authorized, may make any investigation of TCCN's operations and affairs, including its financial condition, as she deems appropriate;

2. A. Pursuant to Tenn. Code Ann. § 56-9-105(a)(1-11), all persons, firms, corporations and associations, including, but not limited to, Respondent TCCN and its officers, directors, members, subscribers, agents, contractors, subcontractors and all other persons with authority over or in charge of any segment of TCCN's affairs, including, without prejudice to the generality, its management company, Medical Care Management Company ("MCMC") and MCMC's owner Access Health Systems, Inc. ("AHS"), their directors, agents, affiliates, employees and officers, and any others, are prohibited and temporarily enjoined from:

1) the transaction of TCCN's business;

2) the waste or disposition of its property;

3) the destruction, deletion, modification, or waste of its records, databases or computer files;

4) the commencement or prosecution of any actions, or the obtaining of preferences, judgments, attachments or other liens, or the making of any levy

against the insurer or against its assets or any part thereof until further order of this Court; and

5) any other threatened or contemplated action, not permitted under the Act, that might lessen the value of the insurer's assets or prejudice the rights of policyholders, enrollees, creditors or providers, or the administration of any proceeding under the Act;

EXCEPT AND WITH THE PROVISO that this Court specifically hereby authorizes all medical and health care providers of TCCN to continue to provide such services in the same manner as provided prior to the filing of the Petition for Rehabilitation, subject to the powers of the Commissioner as Rehabilitator to manage and direct TCCN, and such services during this rehabilitation shall be paid for and considered administrative services expenses of this rehabilitation; and this Court further authorizes the Rehabilitator to apply outside of Tennessee for the relief described in Tenn. Code Ann. § 56-9-105(a);

3. Furthermore, the Court orders that Respondents Medical Care Management Company ("MCMC") and Access Health Systems, Inc. ("AHS"), their directors, agents, affiliates, employees and officers, 1) are prohibited and temporarily enjoined from the destruction, deletion, or waste of **any** of their records, databases or computer files, or modification of any prior records, databases or computer files that in any way relate or pertain to or arise out of the provision of management and/or other services or functions by MCMC and AHS through the management contract with TCCN, **and 2) are ordered to preserve all their records, databases and computer files, regardless of the form or designation of such records, including but not limited to payroll and other compensation records, bank and investment account records, accounting records that in any way relate or pertain to or arise out of the provision of management and/or other services or functions by MCMC and AHS through the management contract with TCCN,** and to produce such records, databases and computer files to the Commissioner as Rehabilitator upon request, pending further order of this Court, so as to protect the Commissioner as Rehabilitator's ability to assess TCCN's performance as a health maintenance organization and MCMC's performance of administrative and other duties for TCCN, and to investigate, discover and examine the affairs of TCCN to determine those causes leading to its hazardous condition;

4. Pursuant to Tenn. Code Ann. § 56-9-106, the officers, managers, directors, trustees, owners, employees, agents, contractors or subcontractors of TCCN, and any other persons or affiliates with authority over or in charge of any segment of TCCN's affairs, including Medical Care Management Company ("MCMC") and Access Health Systems, Inc. ("AHS"), their directors, agents, employees, contractors and officers, are ordered and required to cooperate with the Commissioner in the carrying out of the rehabilitation. The term "person" shall include any person who exercises control directly or indirectly over activities of TCCN through any holding company, parent company, or other affiliate of TCCN. Further, the term "person" shall include any person who exercises control or participation in the activities of the TCCN, such as through the record-keeping and computer systems operation relating to the activities of the TCCN, or any other contractual relationship. "To cooperate" shall include, but shall not be limited to, the following: (1) to reply promptly in writing to any inquiry from the Commissioner requesting such a reply; and (2) to preserve and to make available to the Commissioner any and all books, bank and investment accounts, documents, or other records or information or computer programs and databases or property of or pertaining to TCCN and MCMC and in his possession, custody or control. No person shall obstruct or interfere with the Commissioner in the conduct of this rehabilitation;

5. Any bank, savings and loan association, financial institution or other person, which has on deposit, in its possession, custody or control any funds, accounts and any other assets of TCCN, shall immediately transfer title, custody and control of all such funds, accounts, or assets to the Rehabilitator, and are hereby instructed that the Rehabilitator has absolute control over such funds, accounts and other assets. The Rehabilitator may change the name of such accounts and other assets, withdraw them from such bank, savings and loan association or other financial institution, or take any lesser action necessary for the proper conduct of this receivership. No bank, savings and loan association or other financial institution shall exercise any form of set-off, alleged set-off, lien, any form of self-help whatsoever, or refuse to transfer any funds or assets to the Rehabilitator's control without the permission of this Court;

6. The amounts held in the custodial deposit account established by TCCN with the Commissioner under Tenn. Code Ann. § 56-32-212(b) to assure continuation of health care services to enrollees of an HMO that is in rehabilitation or liquidation, which by operation of law vest in the State of Tennessee immediately prior to the filing of the petition for rehabilitation, shall be furnished by the State of Tennessee to the Rehabilitator for these purposes in the rehabilitation of TCCN; such sums as well as other funds of TCCN while not being used for immediate operations should be invested at interest by the Commissioner to the extent practicable;

7. The Commissioner as Rehabilitator is authorized, pursuant to Tenn. Code Ann. § 56-9-303(a), to appoint one or more Special Deputy Receivers, who shall have all the powers and responsibilities of the Rehabilitator granted under Tenn. Code Ann. §§ 56-9-101, et seq. Further the Commissioner is authorized pursuant to Tenn. Code Ann. § 56-9-303(a), to employ such counsel, clerks, and assistants as deemed necessary. The compensation of the special deputy(ies), counsel, clerks and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the Commissioner, with the approval of the Court, and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the Commissioner;

8. The Commissioner, as Rehabilitator, shall continue to operate TCCN. All expenses of operating TCCN, including professional expenses and medical services, shall be regarded as necessary services and expenses of the rehabilitation, and shall be granted first priority under Tenn. Code Ann. § 56-9-330(1). The Commissioner, as Rehabilitator, shall have the authority to continue to make payments to providers for the provision of health care and medical services to TCCN's TennCare enrollees in the ordinary course of business;

9. The Commissioner, as Rehabilitator, is ordered to make an accounting to the Court no less frequently than semi-annually. The report shall include the Rehabilitator's opinion as to the likelihood that a plan under Tenn. Code Ann. § 56-9-303(e) will be prepared and the timetable for doing so;

10. As set forth in Tenn. Code Ann. § 56-9-303(c), the Rehabilitator is ordered and may take such action as she deems necessary or appropriate to reform and revitalize the insurer. She shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the Rehabilitator. The Commissioner as Rehabilitator has recognized in this case, however, that some of MCMC's services will be necessary to the immediate ongoing operations of TCCN and, therefore, will take steps to continue those services of MCMC that are needed, which shall not in any way be construed as a violation of the injunctive relief granted in this Order. She shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.

She shall also have the full power to review all contracts of TCCN and make any amendments, modifications, terminations, adjustments or new contracts deemed necessary in order to effectuate this Rehabilitation;

11. As set forth in Tenn. Code Ann. § 56-9-303(d), if it appears to the Rehabilitator that there has been criminal or tortious conduct, or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, broker, employee or other person, she may pursue all appropriate legal remedies on behalf of the insurer;

12. As set forth in Tenn. Code Ann. § 56-9-303(e), if the Rehabilitator determines that reorganization, consolidation, conversion, reinsurance, merger or other transformation of the insurer is appropriate, she shall prepare a plan to effect such changes. Upon application of the Rehabilitator for approval of the plan, and after such notice and hearings as the Court may prescribe, the Court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. Any plan approved under this section shall be, in the judgment of the Court, fair and equitable to all parties concerned. If the plan is approved, the Rehabilitator shall carry out the plan;

13. The Rehabilitator shall have the power under Tenn. Code Ann. §§ 56-9-315 and 316, as applicable, to avoid fraudulent or preferential transfers;

14. In addition to all such investigation and examination powers accorded by law to the Commissioner, the Rehabilitator is empowered to examine and investigate the persons and entities in accordance with Tenn. Code Ann. § 56-32-217(c) and for the purposes enumerated therein. The Rehabilitator may seek this Court's enforcement of such powers, and may request the Court to order any examination and investigation for that section;

15. Pursuant to Tenn. Code Ann. § 56-9-304, any Court in this State before which any action in which the insurer is a party, or is obligated to defend a party, is pending when this rehabilitation order is entered, shall stay the action or proceeding for ninety (90) days and such additional time as is necessary for the Rehabilitator to obtain proper representation and prepare for further proceedings. The Rehabilitator shall take such action respecting the pending litigation as she deems necessary in the interest of justice and for the protection of creditors, policyholders, and the public; however, with respect to the lawsuit filed by Respondent on December 12, 2000, against the State of Tennessee, Department of Finance and Administration in the Claims Commission, as well as the lawsuit filed by Respondent on December 13, 2000, in United States District Court, Middle District of Tennessee, against the State of Tennessee (Tennessee Coordinated Care Network v. Warren Neel, et al., No. 3-001226), the Commissioner shall submit to the Court for approval a plan for Respondent to address these lawsuits. The Rehabilitator shall immediately consider all litigation pending outside this State and shall petition the courts having jurisdiction over that litigation for stays whenever necessary to protect the estate of the insurer;

16. Pursuant to Tenn. Code Ann. § 56-9-304, no statute of limitations or defense of laches shall run with respect to any action by or against the insurer between the filing of this petition for appointment of a Rehabilitator for the insurer and the entry of the order granting or denying this petition. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty (60) days after this order of rehabilitation is entered or the petition is denied. The Rehabilitator may, upon an order for rehabilitation, within one (1) year or such other longer time as applicable law may permit, institute an action or proceeding on behalf of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered;

17. If it proves necessary and the Commissioner believes further efforts to rehabilitate the insurer would substantially increase the risk of loss to creditors, policyholders, enrollees or the public, or would be futile, the Commissioner is permitted to petition for the relief under Tenn. Code Ann. § 56-9-305 to convert the action to liquidation of TCCN within this action. TCCN shall be permitted to respond to such petition to convert this action to liquidation at such time, which response may either be consent or opposition to the petition at such time;

18. Any person, firm, corporation or other entity having notice of this Order that fails to abide by its terms shall be directed to appear before this Court to show good cause, if any they may have, as to why they should not be held in contempt of Court for violation of the provisions of this Order;

19. No bond is required of the Commissioner as a prerequisite for the entry of this order or for the issuance of any injunction, restraining order, or additional order issued as provided by Tenn. Code Ann. § 20-13-101, and;

20. The Commissioner may apply to the Court for any further orders which may be necessary to implement the terms of this order, or in aid thereof, to which she may be entitled under the Rehabilitation and Liquidation Act. This Court retains jurisdiction for the purpose of granting such further relief as from time to time shall be deemed appropriate.

B. That TCCN be required to file a response to this Petition, that summons issue to all Respondents, and that an appropriate early hearing date be scheduled for this petition.

C. That the filing of this petition and any requested Order be entered without cost bond as provided by Tenn. Code Ann. § 20-13-101.

D. For such other relief as is appropriate.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF.

Respectfully submitted,

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IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

STATE OF TENNESSEE, ex rel. ANNE B. POPE, Commissioner of Commerce and Insurance for the State of Tennessee,	)	
Petitioner,	)	
v.	)	No._____
TENNESSEE COORDINATED CARE NETWORK, a Tennessee not-for-profit health maintenance organization; MEDICAL CARE MANAGEMENT COMPANY, a Tennessee for-profit corporation; and ACCESS HEALTH SYSTEMS, INC., a Delaware for-profit corporation;	)	
Respondents.	)	

VERIFICATION

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

1. I, Anne B. Pope, am the duly appointed Commissioner of Commerce and Insurance for the State of Tennessee.

2. I have read the foregoing Verified Petition for Appointment of Receiver for Purposes of Rehabilitation and Injunction and swear that the information contained therein is true and correct to the best of my knowledge, information and belief, including information from the TennCare Division of the Department of Commerce and Insurance.

Anne B. Pope

ANNE B. POPE
Commissioner of Commerce and Insurance
for the State of Tennessee

SWORN TO AND SUBSCRIBED before me on this 3rd day of January, 2001.

Gillian E. Barnett.
NOTARY PUBLIC

My Commission Expires: 1/27/01.

INDEX OF EXHIBITS
TO
VERIFIED PETITION FOR REHABILITATION

Exhibit A	Affidavit of TDCI Examinations Manager John Mattingly
Exhibit B	March 6, 2000 Letter of Examination
Exhibit C	May 10, 2000, Notice of Involuntary Administrative Supervision
Exhibit D	September 20, 2000 First Amended Agreed Notice of Administrative Supervision
Exhibit E	Affidavit of TDFA Deputy Commissioner John Tighe
Exhibit F	March 31st, June 30th and September 30th Quarterly NAIC statements of Tennessee Coordinated Care Network
Exhibit G	Affidavit of TDCI Deputy Commissioner Manny Martins
Exhibit H	Certified Copies of Tennessee Coordinated Care Network's annual reports
Exhibit I	Certified Copies of Medical Care Management Company's annual reports
Exhibit J	Affidavit of Courtney Pearre
Exhibit K	Relational chart
Exhibit L	Certified copies of Access Health System, Inc.'s annual reports
Exhibit M	Certified copies of Medical Care Management Company, USA's annual reports
Exhibit N	January 6, 1999 Letter from Susan Short Jones to former Deputy Commissioner Joe Keane
Exhibit O	KPMG Report
Exhibit P	December 7, 2000 letter from Susan Short Jones regarding Anthony Cebrun's position with Tennessee Coordinated Care Network
Exhibit Q	Copy of U.T. Hospital complaint (without attachments) and temporary restraining order